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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/693,465

10/24/2003

Malcolm L. Mitchell

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CROCKETT & CROCKETT  
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SUITE 400  
LAGUNA HILLS, CA 92653

EXAMINER

CHAMPAGNE, LUNA

ART UNIT

PAPER NUMBER

3627

MAIL DATE

DELIVERY MODE

08/03/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/693,465	<b>Applicant(s)</b> MITCHELL ET AL.	
	<b>Examiner</b> Luna Champagne	<b>Art Unit</b> 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/24/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4-6, 8, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobson (2003/0177048 A1), in view of Heagle et al. (5,900,801).

Re claims 1 and 9, Jacobson discloses a system for implementing HACCP process and control in an organization operating numerous restaurants (*see e.g. paragraph 0021*), wherein the organization employs a HACCP administrator (*monitoring system*) tasked with establishing parameters reflecting the organization's HACCP goals; said system comprising: means for entering various HACCP parameters into a database (*see e.g. paragraph 0022*); numerous data acquisition systems dispersed at the numerous restaurants, for use by food service workers, said data acquisition systems comprising PDAs (*see e.g. paragraph 0020 and 0021*); means for communicating entered HACCP parameters to the PDAs via the internet (*see e.g. paragraph 0049 and 0036*); and software installed on the PDAs (*TAM*) for interactive use of the PDAs by the food service workers (*see e.g. paragraph 0014 and 0038*), said software providing operability to the PDA to accomplish the following functions: receive data input from the food service worker regarding various measured or observed conditions relevant to the

HACCP parameters (see e.g. paragraph 0014); and communicate the inputted data from the PDA via the internet to the database accessible to the HACCP administrator from a central location (see e.g. paragraph 0020 – *from PDA to a control center facility*); wherein the database is controlled by the franchiser (see e.g. paragraph 0036 – *applicable collected or stored data can eventually be transferred to a central control facility 14, which may be in the form of a processing center 24 associated with the owner/controller*” is read as the final data being sent to a main database at the central location).

Jacobson does not explicitly teach a system wherein each restaurant is managed by a manager and employs food service workers; and the data acquisition systems are purchased, controlled, and maintained by the franchisees.

However, Heagle et al. teach a system wherein each restaurant is managed by a manager and employs food service workers (*a system for monitoring food service requirements for safety and performance compliance at a food service establishment- see e.g. col. 6, lines 33-36; the manager – col. 6, line 50; unique employee identification badges - see e.g. col. 9 lines 10*); and the data acquisition systems are purchased, controlled, and maintained by the franchisees (see e.g. col. 14, lines 42-55 *The data is under the establishment’s exclusive control – it may be maintained on site*).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention, to modify Jacobson et al. and include a system wherein each restaurant is managed by a manager and employs food service workers and wherein the database is controlled by the franchiser; and the data acquisition systems are

purchased, controlled, and maintained by the franchisees, as taught by Heagle et al., in order to provide central control of the overall system but yet allow each facility to operate based on their individual needs.

Re claim 4, Jacobson discloses a system, wherein the software installed in the PDA provides the further functions of; conditionally prompting the food service worker for additional information pursuant to multi-step HACCP procedures (*see e.g. paragraph 0043 – they will normally require the user to provide one or more specific “user responses”*); conditionally prompting the food service worker for information regarding corrective actions if recorded data or observations are unacceptable (*see e.g. paragraph 0044 – in addition, the result records are also derived from data which may be obtained by the user performing an indicated corrective action... test items being monitored are non-compliant with the parameters*); and communicating the additional inputted data from the PDA to the database (*see e.g. paragraph 0020 – the result records, after being collected are initially stored in the local, portable processor or PDA*).

Re claims 5 and 6, Jacobson discloses a system, wherein each data acquisition system further comprises: a data logger reader proximate the PDA, said data logger reader operable to acquire data from a plurality of data loggers (*probe assembly 30*); one or more data loggers fixed at locations within each restaurant, said locations corresponding to locations at which HACCP data must be taken (*see e.g. paragraph 0061 – metering devices associated with the grill*); wherein the PDA is programmed to

prompt the food service worker, in the completion of a HACCP checklist requiring observation of physical conditions at a location in the restaurant, to read the data logger at the location at which the observation is to be performed (see e.g. *paragraph 0061 – the result will be an automatic user response read out in the form of a specific temperature*), and thereby confirm that the food service worker is observing data relevant to the checklist, and, after receiving appropriate input from the data logger reader, accepting observation input in completion of the checklist (see e.g. *paragraph 0066 –each of a number of entries, such as user responses manually or automatically entered using the input facilities of the processor assembly 16 are date and time stamped*); a temperature probe operably connected to the PDA for acquisition of temperature data; a data logger reader proximate the temperature probe, said data logger reader operable to acquire data from a plurality of data loggers (see e.g. *paragraph 0038 – the probe assembly 30 preferably comprises a temperature sensing probe structure*);

Re claim 8, Jacobson does not explicitly disclose a system, further comprising: means for indicating exceptions to checklists and checklist items, including checklists not performed, checklist items not checked, and unacceptable measurements of HACCP parameters, to the HACCP administrator

However, Heagle et al. disclose a system, further comprising: means for indicating exceptions to checklists and checklist items, including checklists not performed, checklist items not checked, and unacceptable measurements of HACCP parameters,

to the HACCP administrator (*see e.g. col. 14, lines 14 –17 daily exception reports enabling corrective actions*).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention, to modify Jacobson et al. and include means for indicating exceptions to checklists and checklist items, including checklists not performed, checklist items not checked, and unacceptable measurements of HACCP parameters, to the HACCP administrator, as taught by Heagle et al., in order to keep accurate documentations and provide full and complete evaluation of the performance parameters of the restaurants.

3. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobson (2003/0177048 A1), in view of Heagle et al. (5,900,801) as applied to claim 1 above, and further in view of Official Notice.

Re claims 2 and 3, Jacobson discloses a system, further comprising means for accepting input from the restaurant managers regarding applicability of various HACCP parameters to activities specific to a particular restaurant (*see e.g. paragraph 0043-specific user responses*); and thereafter present parameters to food service workers within the particular restaurant with a customized collection of HACCP parameters (*see e.g. paragraph 0019- the result record are comprised of data derived from a collection, storage and processing of the various user responses by responsible personnel at the one or more food service*).

Jacobson, in view of Heagle et al. do not explicitly disclose means for limiting entry of HACCP parameters to the HACCP administrator.

However, the Examiner takes Official Notice that it is commonly known in regular business practice that systems are set up and defined by authorized administrators. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention, to modify Jacobson et al., in view of Heagle et al. and include means for limiting entry of HACCP parameters to the HACCP administrator, in order to maintain security of the system.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobson (2003/0177048 A1), in view of Heagle et al. (5,900,801) as applied to claim 6 above, and further in view of Seperant (5,056,048).

Re claim 7, Jacobson discloses a system, wherein the temperature probe is characterized by an insertion portion adapted for insertion into food or other mass and (*see e.g. paragraph 0061 – the user is directed to clean the probe and insert the probe into the center of the hamburger*).

*Jacobson, in view of Heagle et al.* do not explicitly disclose the temperature probe with a handle, and the data logger reader is fixed to the handle, spaced from the insertion portion.

However, Seperant discloses the temperature probe with a handle, and the data logger reader is fixed to the handle, spaced from the insertion portion (*see e.g. fig. 1*).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention, to modify Jacobson et al., in view of Heagle et al., and include the temperature probe with a handle, and the data logger reader is fixed to the handle,



spaced from the insertion portion, as taught by Seperant, in order to facilitate the use of the device.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Koether (2002/0082924 A1), Bladen et al. (2002/0099586 A1), Takeda et al. (2002/0035439 A1), Skiffington et al. (5,827,675).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luna Champagne whose telephone number is (571) 272-7177. The examiner can normally be reached on Monday - Friday 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Florian Zeender can be reached on (571) 272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

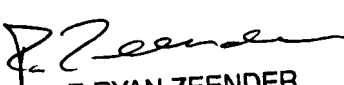
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Application/Control Number: 10/693,465  
Art Unit: 3627

Page 9

Luna Champagne  
Examiner  
Art Unit 3627

July 26, 2007

 7/30/07  
F. RYAN ZEENDER  
SUPERVISORY PATENT EXAMINER